IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

Bail Appl..No. 4394 of 2007()

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[CRIME NO.166/07 OF KOIPPURAM POLICE STATION]

PETITIONER/SOLE ACCUSED:

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SANTHOSH @ PAUL C.MATHEW,
CHAKKITTAYIL HOUSE, THADIYOOR P.O., AYROOR.

BY ADV. SRI.ARUN.B.VARGHESE

RESPONDENTS: COMPLAINANT:

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1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
KOIPPURAM POLICE STATION, PATHANAMTHITTA DISTRICT.

BY PUBLIC PROSECUTOR SRI.P.RAVEENDRA BABU

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J.**

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B.A.No.4394 of 2007

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Dated this the 20th day of July 2007

**O R D E R**

Application for anticipatory bail. The petitioner is the husband of the de facto complainant. He faces allegations under Section 498A I.P.C. The marriage took place in 2002. It was a marriage under the Special Marriage Act. The spouses were in love, it is submitted. Subsequently, two children have been born in the wedlock. Allegations of matrimonial cruelty are raised against the petitioner. Crime has been registered on the basis of a private complaint filed before the learned Magistrate and referred by the learned Magistrate to the police under Section 156(3) Cr.P.C. The petitioner has come before this court apprehending imminent arrest by the police. He prays that directions under Section 438 Cr.P.C may be issued.

2. The learned Public Prosecutor does not oppose the application. The learned Public Prosecutor submits that the investigation is already completed. The investigating officer does not want to arrest the petitioner now. Final report has already been filed before the learned Magistrate. It is for the petitioner now to appear before the learned Magistrate and seek

bail, submits the learned Public Prosecutor. After the decision in Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is trite that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a coercive process issued in a pending proceedings. I am, in these circumstances, satisfied that this is an eminently fit case where resorting to the dictum in the said decision, directions under Section 438 Cr.P.C can be issued in favour of the petitioner. I take that view, taking note of the reality that if the petitioner were arrested and incarcerated in prison, that would close the doors of any reconciliation of the dispute between the spouses.

3. In the result, this petition is allowed. Following directions are issued under Section 438 Cr.P.C in favour of the petitioner.

i) Petitioner shall surrender before the learned Magistrate having jurisdiction at 11 a.m on 27/7/2007.

ii) He shall be released on regular bail on condition that he executes a bond for Rs.25,000/-(Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

iii) The petitioner shall make himself available for interrogation before the investigating officer between 10 a.m and 1 p.m on 28/07/2007 and 29/07/2007 and thereafter on all Mondays and Fridays between 10 a.m and 12 noon for a period of one month. Subsequently he shall so appear as and when directed by the investigating officer in writing to do so.

(iv) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law, as if these directions were not issued at all.

(v) If he were arrested prior to 27/7/2007, he shall be released from custody on their executing a bond for Rs.25,000/- (Rupees twenty five thousand only) without any sureties, undertaking to appear before the learned Magistrate on 27/7/2007.

**(R.BASANT, JUDGE)**

jsr

// True Copy// PA to Judge

**R.BASANT, J.**

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007